

**ADDITION OF CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 3. STATE PROPERTY OPERATIONS
CHAPTER 1. STATE LANDS COMMISSION
ARTICLE 14. ADMINISTRATIVE HEARINGS**

INITIAL STATEMENT OF REASONS

The California State Lands Commission (“Commission”) proposes to add Article 14 to Chapter 1 of Division 3 of Title 2 of the California Code of Regulations. The new regulations will be sections: 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, and 3016.

PROBLEM STATEMENT

The California Legislature adopted Public Resources Code sections 6224.3-6224.5 (Chapter 247, Statutes of 2012, effective January 1, 2013) (“Trespass Statute”) to facilitate efficient management of public land under the Commission’s jurisdiction. In general, the Commission manages land underlying navigable rivers, lakes, streams, bays, estuaries, inlets, and straits that haven’t been granted to others. The Commission also manages the shoreline out to three miles offshore, as well as tidelands not granted in trust to local municipalities. Additionally, the Commission manages certain properties granted to the State by the U.S. government to be used to support public education. Together, the Commission manages nearly four and a half million acres of land (collectively “State Lands”) throughout the state.

Current law requires Commission authorization for structures on State Lands. Most authorization agreements include insurance and indemnity provisions to protect the state, and commonly require compensation for use of State Lands. When a structure is under lease, the Commission is better able to reduce the risk that the owners will abandon a structure in place at the end of its economic life. Abandoned and decaying structures may be dangerous and expensive to remove or may pose significant public safety and navigational hazards until they can be removed. Finally, the Commission seeks to promote parity with existing lessees who have complied with the law. Illegally placed structures may interfere with the public’s, or current lessees’, use of State Lands.

To date, the Commission has been able to address only a fraction of the unauthorized structures on State Land due to the costs and staff hours required to file a civil trespass action. The Trespass Statute authorizes administrative hearings to address unauthorized structures on State Lands. The Trespass Statute authorizes fines up to \$1,000 a day, but does not specify how a penalty is calculated. Other key details about service of notice, notice of hearings, hearing procedure, and the content of a final decision are not specified in the statute. Without a clear regulatory framework, the hearing procedure would be unclear to members of the public. These regulations are necessary to implement, interpret, and make specific the Trespass Statute.

BENEFITS

Administrative hearings will provide a more efficient mechanism for resolving trespass issues and will reduce or eliminate the need for costly civil litigation. These economic benefits will be shared by the Commission, the Attorney General's Office, and persons suspected of maintaining structures in trespass. The benefits and fiscal impacts of addressing potential violations through administrative hearings rather than civil litigation were considered by the Legislature when the Trespass Statute was passed. Accordingly, this regulatory rulemaking will not reconsider these factors.

The proposed regulations provide a number of benefits, the foremost of which is transparency. The administrative process is set forth in great detail, ensuring that members of the regulated community understand their rights and have an opportunity to present evidence in their defense. The proposed regulations will provide potential violators ("Respondents") with early access to the evidence in the case. The Notice of Violation includes a summary of the Commission's evidence, and includes instructions on how to obtain copies of the enforcement file. This will give Respondents an opportunity to review the evidence and prepare for the hearing.

The regulations require a proposed written decision to be sent to Respondents and the Commissioners at least 10 days prior to the hearing. The proposed decision will function much like a tentative ruling in a civil case. The Commission's position will be reduced to a clear statement of law and fact. Again, this provides Respondents an opportunity to prepare for the hearing by focusing on areas of the proposed decision that the Respondent disputes. The proposed decision should also streamline the hearing by focusing the presentations on disputed issues.

Finally, the proposed regulations introduce a number of ways to reduce, toll, or waive penalties. The Trespass Statute is silent on these important issues. It may take several months to obtain the permits necessary to remove a violating structure. Reducing or tolling penalties while permit applications are pending might be equitable under the circumstances and avoids incentivizing unpermitted removals. The regulations also allow the penalty to be tolled while Commission staff process an application. Application processing times can be several months. It might be unfair to impose substantial penalties during this time because Respondents have no control over Commission processing times. Finally, the proposed regulations allow the Commission to waive some or the entire penalty once the violating structure is brought under lease or removed. If a Respondent acts promptly to resolve a violation, it may be in the state's best interest to reduce or waive penalties. This provision would prioritize staff resources for resolving violations rather than collecting fines. Together these provisions make penalties under the Trespass Statute flexible, fair, and efficient.

PURPOSE, NECESSITY, AND BENEFIT

The Commission currently has no regulations providing for administrative hearings. The informal hearing procedures of the Administrative Procedures Act (Cal. Gov. Code §§ 11400 et seq.) (the “APA”) provide some guidelines for informal hearings such as those authorized by the Trespass Statute. The proposed regulations provide additional specificity not found in the default provisions of the APA. A copy of the approved regulations will be included with the Notice of Violation in order to inform Respondents of the process. A summary of the specific purpose of each proposed section, why it is necessary, and how it will be beneficial will be set forth below.

Section 3000 provides a statement of the authority and purpose for the proposed regulations and clarifies that the trespass hearing procedures do not apply to the abandoned vessel program. A boat technically qualifies as a “manmade construction.” It was necessary to clarify that the abandoned vessel program authorized by Public Resources Code section 6302.1 et seq. has its own procedures. This section also increases clarity and transparency by establishing the authority under which the Article is enacted.

Section 3001 provides definitions of key terms used throughout the proposed regulations. This section is necessary because some terms are capable of multiple interpretations. This section improves clarity, readability, and overall understanding of the regulations for those impacted by them by making terms specific.

Sections 3002, subpart (a) and (b) are necessary to clarify the prohibited conduct. Many Commission authorizations are for structures on State Lands which are used in conjunction with a privately owned waterfront property. For example, a dock may exist partly on private property and extend out into a river which is State Land. When the private uplands are sold, the Commission authorization does not automatically pass to the new owner. Until the Commission has approved an assignment of the lease, the new owner of the uplands is not authorized to use State Lands. Commission authorizations also specify the structures and uses allowed. Expanding or altering the use of State Lands without authorization is also a violation. The proposed regulations specify that these situations are violations, in addition to structures where there is no lease or the lease is expired. These provisions benefit the public by providing clarity and transparency.

Section 3002, subpart (c) notifies Respondents that even if they submit a lease application to the Commission after being cited, the Commission may decline to authorize the structure and require its removal. This provision is necessary to avoid giving Respondents the impression that every violation can be remedied by submitting an application.

Section 3003, subparts (a) and (c) authorize Commission staff to investigate a suspected violation. These provisions are necessary because the Trespass Statute is silent on whether Commission authorization is necessary to investigate a violation or issue a Notice of Violation.

As proposed, staff investigates a violation and presents the evidence to the Executive Officer or Assistant Executive Officer who determines whether it is appropriate to issue a Notice of Violation. The Commission typically meets about six times a year. The proposed process is more efficient as it avoids a delay of up to two months to issue the Notice of Violation. The proposed regulations are beneficial because the APA and due process principles require the hearing officer to be separated from the investigative process. As proposed, the Commissioners are uninvolved in the process until the hearing.

Section 3003, subpart (b) authorizes Commission staff to inspect and/or survey the structures and land in question. This provision is necessary to ensure that Commission staff can adequately investigate a suspected violation, and to ensure that an enforcement action is appropriate. It may be necessary to inspect a structure, or conduct a survey to determine whether a structure extends beyond private land onto State Lands. In some cases, the only practical way to access the area in question is by passing through private property. Sections of the California Civil Code, the Business and Professions Code, the Code of Civil Procedure, and the Penal Code authorize surveyors to enter private property to conduct a survey. These existing laws do not apply to Commission staff other than surveyors, and would not allow inspection of structures. The proposed regulations are beneficial both to facilitate investigations and notify private property owners about the Commission's right to inspect and survey lands in question.

Section 3004 specifies the procedure for serving a notice of violation. Section 3004, subpart (a) notifies Respondents that further documentary evidence may be obtained at the Commission's Sacramento office. The Trespass Statute did not specify how a Respondent would obtain the documentary evidence in order to prepare for a hearing. Section 3004, subpart (b) requires the Notice of Violation to include the date, time, and location of the enforcement hearing. Section 3004, subpart (c) specifies that the Notice of Violation will include a Statement of Defense form. This form helps to organize and focus the Respondent's defenses and relate these defenses to the pending action. The Statement of Defense form is discussed in more detail below.

Section 3004, subpart (d) clarifies how personal service of the Notice of Violation can be completed. This subpart is necessary to interpret and make specific what "personal service" includes and how it may be completed. A strict interpretation of personal service would require delivery by hand. However, The Code of Civil Procedure ("CCP") provides several alternatives for service of process in a civil litigation. One alternative is to leave a copy of the Notice of Violation at the Respondent's usual place of business or home with a person of reasonable competency, and thereafter mailing a copy to the same location. This provision is beneficial where the Respondent may work unusual hours, or travel extensively.

Another method to complete personal service is leaving a copy of the Notice of Violation with an authorized agent. In some cases, a Respondent may have a designated attorney or other agent. Particularly where a person or business has counsel on retainer, this method of service will make counsel aware of the pending administrative action immediately. Similarly, this subpart allows

personal service on business entities by delivering the Notice of Violation to the designated agent for service. The agent is listed with the Secretary of State and is the appropriate recipient of legal notices.

This subpart authorizes service of the Notice of Violation on security personnel if the security personnel prohibit access. The CCP requires gate guards to allow a registered process server access to a gated community for service of summons. This CCP provision does not apply to Commission staff serving notice of an administrative hearing. Accordingly, the proposed regulations include a provision similar to the CCP, but applicable to these proceedings in order to facilitate service of the Notice of Violation. Collectively, this subsection makes personal service more efficient while ensuring Respondents receive adequate notice of the hearing.

Section 3004, subpart (d) also specifies how the Notice of Violation may be served by mail. Several key details were not provided in the Trespass Statute. The proposed subpart (d) specifies that any mail service equivalent to the United States Postal Service which includes a delivery verification may be used. Additionally, the proposed regulation provides a presumption that a Notice of Violation sent to the usual mailing address, normal place of business, or the address where Respondent's property tax bill is sent is the correct address. Finally, this subpart allows any competent member of the household to sign the delivery verification. These provisions make clear precisely how service by mail should be carried out. This benefits Commission staff and Respondents and makes the entire process more precise and transparent. Section 3004, subpart (e) specifies that Commission staff may post the Notice of Violation on a single structure where there are multiple structures suspected of violating the Trespass Statute.

Section 3004, subpart (f) addresses situations where Commission staff is prevented from posting the Notice of Violation on a structure, or doing so is otherwise dangerous. This provision is necessary to avoid placing Commission staff in potentially dangerous situations, or escalating a situation in order to strictly comply with the Trespass Statute. This section incorporates provisions similar to the CCP which also provides service of summons by leaving the package near the area, or with a gate guard.

Section 3005 allows Respondents to stipulate to undisputed facts, or to a resolution of an entire matter. Government Code section 11415.60 allows informal hearings to be resolved by settlement. The proposed regulation provides an additional layer of efficiency by allowing stipulations of fact. This provision will benefit both the Commission and Respondents by reducing the length and complexity of many hearings.

Finally, this section allows the Executive Officer or Assistant Executive Officer to terminate an enforcement action. If evidence is discovered indicating the Respondent is not liable for a violation of the Trespass Statute, the enforcement action can be terminated prior to the hearing. This section is necessary because the Trespass Statute does not have a parallel provision.

Section 3005 provides important time and cost savings for both the Commission and Respondents.

Section 3006 outlines the public notification process for pending enforcement matters. This section also specifies the process for notification of subsequent or postponed enforcement matters. This section is necessary because the Trespass Statute only specifies how a Respondent will be notified. Interested members of the public may wish to attend or comment on the proceedings. The Bagley-Keene Open Meeting Act requires the Commission to publish meeting agendas at least 10 days prior to the meeting. Members of the public can subscribe to the mailing list by contacting the Commission or via the Commission's website. Including notice of enforcement actions in the agenda maximizes the amount of notice that can be provided to the public in an efficient manner. Finally, this section provides necessary specificity on the procedures to change the date of the hearing, schedule a follow up hearing, or postpone a hearing.

Section 3007 prohibits *ex parte* communications with the Commissioners. An *ex parte* communication occurs when one side of a dispute has a private conversation with the person who makes a decision in the case without opportunity for the other side to be present and speak. Here, Commission staff represents one side, Respondents the other, and the Commissioners are the decision makers. The Commissioners are public officials, and members of the public often contact the Commissioners directly. However, an *ex parte* communication with the Commissioners concerning an upcoming enforcement matter could disqualify a Commissioner from presiding over the hearing. The Trespass Statute requires a Commissioner or his or her appointed deputy to serve as the presiding officer. In order to ensure due process, the Commissioners are not involved with the investigation and this section prohibits *ex parte* communications. In the event an *ex parte* communication does occur, this section cites the portion of the APA that provides how to cure any conflict created by such *ex parte* communications. This section is necessary because due process requirements make these hearings different from other Commission business the Commissioners preside over. This section notifies Respondents that they cannot directly contact the Commissioners regarding an enforcement matter.

Section 3008 prohibits disruptive or obstructive conduct at a hearing. Persons violating this section may be excluded even if they are a Respondent or witness. Section 3008 is necessary to provide for orderly proceedings. Disruptive and disorderly conduct can jeopardize Respondents' or staff's ability to present a case, or can result in an unclear transcript. This section is beneficial to maintain orderly proceedings.

Section 3009 directs the Executive Officer or Assistant Executive Officer to submit a Recommended Decision and Order to the Commissioners and Respondents prior to the hearing. This document will analyze the known and relevant law and facts, make a recommended finding, propose a penalty, and propose and any orders appropriate under the circumstances, such as

removal of a violating structure. Subpart (b) specifies that the Statement of Defense form must be submitted in a timely manner, or the information contained therein will not be included in the Recommended Decision and Order. Subpart (b) also details the content of the recommended decision. Subpart (c) specifies that the recommended decision will be provided to the Commissioners and Respondents 10 days prior to the hearing.

The Trespass Statute does not provide for a recommended decision. This extra procedural step will provide significant benefits to Respondents and the Commission. Respondents will receive the recommended decision at least 10 days prior to the hearing. Respondents can use this document to prepare for the hearings and focus on contested issues. The recommended decision will also serve to streamline and focus the hearings, and the Commissioners will benefit from having an analytical framework from which to conduct the hearing. Collectively, these provisions will make the entire process more transparent and efficient.

Section 3010 addresses the evidentiary standard for an enforcement hearing. Subpart (a) provides that all information relevant to the matter may be admitted if it is reasonably trustworthy. In civil court, rigorous rules limit what sort of evidence can be presented and considered. A more relaxed and common-sense standard is proposed in this rulemaking so that Respondents will be able to introduce evidence in their defense without having to navigate complex and confusing standards of admissibility found in more formal proceedings. This subpart is necessary to inform Respondents about the applicable evidentiary standard, and to specify what this standard is for a court that may review the action.

Section 3010, subpart (b) allows the Presiding Officer to exclude unduly burdensome or repetitious evidence. For example, the summary of findings from a reputable and relevant scientific study would probably be admissible. On the other hand, it would be burdensome to submit hundreds of pages of raw data from a study and repetitious to submit dozens of studies on the same subject. This section is necessary in order to streamline the hearings and to avoid an unnecessarily cumbersome administrative record.

Section 3011 provides that the Commission may hold a hearing and issue and order if a Respondent or witness fail to appear. Section 6224.4(c) of the Trespass Statute allows a hearing to go forward if a Respondent fails to appear. This section expands on this to include failure of a witness to appear. This section was also included in the proposed regulations so that Respondents receive actual notice that they may waive important rights by ignoring the notice and not appearing at the enforcement hearing. A copy of these regulations will be provided to Respondents with the Notice of Violation.

Section 3012 specifies the enforcement hearing procedures. The detailed explanation will help the Respondent understand the hearing process and adequately prepare to present their position. Subpart (a) specifies which Commissioner will serve as the Presiding Officer. Subpart (b) allows the Presiding Officer to set time limits on presentations. The hearings proposed herein will occur at regular Commission meetings, some of which already take most of a day to complete. Subpart (b) is necessary to keep the hearing focused on the issues in controversy. Subpart (d) states that a Respondent should focus their presentation on contested matters relative

to the violation. Subparts (c), (e), (f), (g) and (h) each deal with minor procedural issues of the hearings and set forth a step-wise procedure for how the hearings will be held. Subsection (h) allows the Commission to continue a hearing if necessary. These provisions are all necessary because the Trespass Statute is silent on these procedural issues.

Section 3013 subparts (a) and (b) set forth the process to produce a written decision following an enforcement hearing. The Presiding Officer will consider the information submitted in the recommended decision and evidence presented at the hearing. On consideration of the law and facts on record, the Presiding Officer may adopt the recommended decision and order; modify the recommended decision and order; or direct Commission staff to draft an entirely new decision and order. This process will allow the Presiding Officer to use the recommended decision and order much like a tentative ruling in civil matter, ensuring that a written decision is promptly available for the Respondent. This process also preserves the ability to alter the decision and order based on information presented at the hearing. This section makes explicit what was implicit in the Trespass Statute. Although the Trespass Statute discusses an order of the Commission, the Administrative Procedures Act requires a written decision. This section is necessary to make the Trespass Statute comply with existing law.

Section 3013 subpart (c) specifies that the Commission will vote to adopt the Presiding Officer's decision and order. Official actions of the Commission require a majority vote from the three members in a public meeting. By having the Commission vote to accept the decision and order, it makes clear that the Commission has taken an official action. Further, it removes the question of whether a Respondent must appeal the Presiding Officer's decision to the Commission as a whole in order to exhaust administrative remedies prior to filing suit in court. This provision leaves open the possibility for the Commission to modify the Presiding Officer's decision and order in the event that some modifications are necessary for the action to gain support from the majority of the Commission. This subpart is necessary to clarify these important procedural issues, and to make the entire process more transparent for Respondents.

Section 3013 subpart (d) defines when the Commission's decision is final for purposes of judicial review. This section is necessary to clarify section 6224.4(e) of the Trespass Statute. Without this provision, it may be unclear whether the order is final after the Presiding Officer issues the decision and order, or whether the Commission must first vote to adopt the decision and order. Typically, these two events should be on the same date, but in the event they occur at separate meetings, this provision specifies when the decision is appealable, and when the time for appeal has run.

Section 3013 subpart (e) specifies how service of the written decision and penalty order may be accomplished. The APA requires that Respondents receive a written decision when a fine is imposed. This provision is necessary to clarify how this written decision may be provided.

Section 3014 specifies how the penalty is calculated and provides for procedures to toll the penalty while a violation is being remedied. This section also delineates when a penalty will end, and provides the Commission a mechanism to waive some, or all, of the penalty. Section 3014 subparts (a) and (b) clarify how the penalty is calculated. These provisions are necessary because the Trespass Statute contains two separate methods to calculate the penalty without specifying how to determine which formula should be used, or how to calculate the penalties under the per diem method. These subparts bring necessary clarity and transparency to the penalty calculations.

Section 3014 subpart (c) specifies how the factors listed in PRC section 6224.3(c) of the Trespass Statute may be used, and how the penalty order should reflect this modification. This section is necessary because the Trespass Statute lists several factors which must all be considered when imposing a penalty, but fails to specify how these factors are to be used. The proposed regulations provide a base penalty which may be adjusted on consideration of the factors in PRC section 6224.3(c).

Section 3014 subpart (d) specifies when the penalty begins to accrue along with a provision for imposing a reduced penalty initially. The Trespass Statute requires a penalty to be imposed from the first day the Commission issues an order until the violation is remedied (PRC 6224.3(d)). Inclement weather, seasonal work restrictions, and obtaining necessary permits or approvals could prohibit Respondents from immediately complying with a Commission order. Under the proposed regulations, the Commission could modify a penalty from \$500 a day down to an amount roughly equivalent to the rental value of the land while the Respondent obtains permits to remove the structure, or when other reasons support a temporarily reduced penalty. This flexibility will help ensure that a Respondent will comply with environmental laws and local permitting. This section was necessary to provide a mechanism to shape a penalty to the circumstances while still complying with the Trespass Statute. This section differs from subsections (e) and (f) below in that a penalty is still being imposed, but it is modified to a reduced amount.

Section 3014 subpart (e) allows for tolling of a penalty while Commission staff process an application. Typical application processing periods range from a few weeks to several months. Once a Respondent submits a completed application and pays all processing fees, the Respondent cannot control the time Commission staff take to process an application. It may be unfair to Respondents who are trying to comply with a Commission order to impose a fine during the period staff is processing an application. This subpart specifies that the Respondent must complete the application process and execute a Commission Authorization within four months or the penalty resumes as if it had not been tolled. Similar to subpart (d) above, these provisions do not exist in the Trespass Statute. These provisions give the Commission necessary flexibility to match the penalty to the circumstances while also discouraging dilatory tactics.

Section 3014 subpart (f) is similar to subsection (e) above, but applies to Respondents who choose to remove violations rather than bring them under lease, and this section allows the Commission to toll the penalty entirely. It may take a Respondent some time to secure a reputable contractor and begin work. This section is necessary to provide a reasonable time for removal work to be done in a safe and legal manner, rather than inducing Respondents to remove violations in a potentially unsafe manner in order to minimize the fines being imposed. This section gives the Commission added flexibility in imposing penalties.

Section 3014 subpart (g) is necessary to specify when, and under what circumstances, the penalty ends. Section 6224.3(d) states that a penalty shall continue until a violation is cured. When Respondents chose to remove violating structures, it is important to specify that staff must verify the removal. For example, a Respondent may simply remove the buoy float but not remove the anchor block from the bed of the waterway. This would not qualify as a complete removal. Staff verification will avoid follow-up actions for incomplete removal. For Respondents that choose to bring structures under lease, it is important to specify that the Commission Authorization must be executed by using the specially defined term from section 3001 subpart (a)(2). In some cases, applicants assume that a structure is in compliance once the application is submitted, or the lease is valid once it is authorized at the Commission meeting. This section clarifies that, in keeping with contract law, the lease is not valid until executed by both parties.

Section 3014 subpart (h) provides the Commission with the ability to waive some or all of a penalty imposed under this article. The Trespass Statute authorizes fines, but is silent on whether fines can be waived. Much like subparts (d) through (f) above, this section allows the Commission to tailor a penalty to the circumstances. This section also allows Commission staff to prioritize bringing structures into compliance rather than focusing on collecting fines and penalties in every matter.

Section 3015 specifies the contents of the administrative record. This section is necessary in the event the Commission's decision is appealed to a court for review. This section promotes efficient judicial review and reduces disputes over the contents of the administrative record. This level of detail was not provided in the Trespass Statute.

Section 3016 authorizes the Commission to establish certain decisions as precedent. This may increase the efficiency and transparency of future Commission enforcement hearings. In certain cases, repeated issues may be faced, such as whether a particular type of structure varies from or exceeds the typical authorization. Section 3016 is necessary because the Trespass Statute is silent on this issue. Any decision established as precedent would be indexed and published pursuant to section 11425.60 of the Government Code.

Appendix A is an example of what the Notice of Violation will look like. Section 6224.4(a)(1) – (a)(5) set forth required content for the Notice of Violation. However, Exhibit A provides additional detail and clarity intended to give Respondents a clear understanding of the process.

The specific facts will vary from one case to another, but the general boilerplate information will remain the same. The Notice of Violation is included as Appendix A to provide necessary specificity.

Appendix B is an example of the Statement of Defense form. This form will serve to focus and organize a Respondent's presentation of information. The form includes a specific statement about the elements required to find a violation and advises the Respondent to address these elements. Moreover, the Statement of Defense form includes numbered paragraphs which serve to organize the Respondent's information. This helps staff to process the Respondent's position, and it will help the Respondent make an effective presentation in their defense at the hearing. Section 3009 requires a Respondent to submit the Statement of Defense form at least twenty days prior to the hearing in order to have the form considered in the recommended decision and order. This deadline allows staff a minimum of ten days to process the information in the Statement of Defense form and include it in the recommended decision and order that is sent to the Commissioners and Respondents ten days prior to the hearing. Inclusion of this form is necessary because the Trespass Statute does not include details about a Statement of Defense form. This form is critical to ensure efficient hearings.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

There are no technical, theoretical, and/or empirical studies, reports, or documents associated with the proposed regulations.

ECONOMIC IMPACT ASSESSMENT

The Trespass Statute prohibits unauthorized structures on State Lands and authorizes administrative fines of up to \$1,000 a day; or up to 160% of the rental value of the property. The proposed regulations provide a comprehensive process for orderly hearings including: initial investigation of suspected violations, the content of a Notice of Violation, service of the Notice of Violation, production of a proposed written decision, guidelines for the hearing, guidelines for issuing and finalizing a written decision, specification of the penalty to be imposed, provisions for additional orders such as removal of trespassing structures, criteria for waiving or reducing penalties, and the process to appeal a decision.

The economic impacts of addressing trespassing structures through an administrative process rather than filing civil suits in court were considered by the California Legislature when the Trespass Statute was passed. The many economic benefits of a more efficient enforcement mechanism were among the reasons the Trespass Statute was necessary and ultimately passed by the Legislature. In summary, the administrative process will result in significant savings to the Commission, the Attorney General's Office, local courts, and Respondents. These economic impacts are not reassessed when considering the implementing regulations.

The impacts being analyzed are those specifically caused by the proposed regulations. Here, the proposed regulations provide definitions, clarify the required process, and make a number of procedural matters more transparent. The proposed regulations have no economic impacts beyond the underlying statute. The regulations do not make compliance with the law more difficult or costly, and do not impose any additional costs on the state not already being incurred. The proposed regulations do not expand the application of the Trespass Statute, or increase the penalties imposed thereby.

The regulations will only affect persons who maintain structures on State-owned land (typically waterfront property), without authorization, who refuse to remedy the violation when contacted, and against whom the Commission initiates an administrative process. The hearings take place at the Commission's regular meetings, which are currently held six times a year. Because of the limited number of meetings held each year, and the limited amount of time at each meeting, the total number of enforcement actions taken each year will be relatively low. Commission staff anticipates approximately 12 – 18 enforcement actions in a given year, at most. As a result, the scope of possible impacts for these regulations is extremely limited on California's residents and business community.

The Creation or Elimination of Jobs Within the State of California

The regulations are designed to implement the Trespass Statute and provide for orderly and just administrative hearings. There is no impact on the legal community because informal administrative hearings do not require the Respondent to retain an attorney. There will be no impact to Commission staff because existing staff resources will simply be reallocated. Accordingly, the Commission has determined that this regulatory proposal will not have an impact on the creation or elimination of jobs in the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses Within the State of California

The regulations are designed to implement the Trespass Statute and provide for orderly and just administrative hearings. The regulations are not relevant to the creation or elimination of businesses in California because the regulations are procedural in nature. The economic impacts of holding the hearings and imposing the fines were already assessed when the Trespass Statute was before the legislature. The legal requirement to have authorization from the Commission, and the process for obtaining this authorization is not impacted in any way by the regulations. The regulations do not increase or decrease the costs of doing business in California and do not create requirements that would either create new jobs or eliminate others. The regulations do not create additional impacts on the business community. Therefore, the Commission has determined that this regulatory proposal will not have a significant impact on the creation of new businesses or the elimination of existing businesses in the State of California.

The Expansion of Businesses Currently Doing Business Within the State of California

The regulations are designed to implement the Trespass Statute and provide for orderly and just administrative hearings. The regulations are not relevant to the expansion of businesses in California because the regulations are procedural in nature. The economic impacts of holding the hearings and imposing the fines were already assessed when the Trespass Statute was before the legislature. The statutory requirements to have authorization from the Commission, and the process to obtain this authorization are not impacted. The regulations do not increase or decrease the costs of doing business in California and do not create requirements that would either create new jobs or eliminate others. The regulations do not create additional impacts on the business community. Therefore, the Commission has determined that this regulatory proposal will not have a significant impact on the expansion of existing businesses in the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The regulations are designed to implement the Trespass Statute and provide for orderly and just administrative hearings. The primary benefit of these regulations is creating a specific and transparent administrative process where Respondents may present information in their defense. A copy of the regulations will be included with a Notice of Violation, giving Respondents a guide to the administrative process. The regulations may indirectly benefit the health and welfare of California residents, as well as the environment by helping the Commission to address a greater number of trespassing structures more efficiently.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The United States Census Bureau estimated California's population to be 38,802,500 in 2014, and reported 3,425,510 firms in California in 2007.¹ The Commission staff anticipates holding no more than 18 administrative hearings under the proposed regulations each year.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), Commission staff must determine that no reasonable alternative, considered or otherwise identified and brought to the attention of the Commission would be more effective, less burdensome and equally effective, or would be more cost-effective and equally effective in implementing the statutory policy or other provision of law.

Alternative 1: Hold the hearing before an Administrative Law Judge.

¹ Data retrieved 4/22/2015 at 1:54 p.m. from <http://www.census.gov/quickfacts/table/BZA010212/00,06>

This option would have a hearing before an Administrative Law Judge (ALJ) or similar third-party neutral finder of fact. The ALJ would prepare a written statement of fact which the Commission would use as the basis for any penalty imposed.

This option is more burdensome for the regulated community and less efficient. Alternative 1 would create a more burdensome process as Respondents would be required to attend two different hearings whereas the proposed regulations require only one. Alternative 1 would also introduce additional delay in the hearing process, increase the amount of time Commission staff would spend on each enforcement matter, and reduce the overall number of trespassing structures the Commission can address in a timely manner.

The Trespass Statute specifically requires a Commissioner to act as the presiding officer. (Public Resources Code section 6224.4(d)) The Trespass Statute does not preclude an independent party issuing a finding of fact prior to the Commission hearing, but this additional layer of process was not expressly contemplated either. At typical trespass matter will involve establishing: (1) whether a Respondent is responsible for placing or maintaining a structure; (2) whether the structure is on State Lands; and (3) whether the Respondent has authorization for the structure. These are relatively simple findings of fact that can be easily addressed in an informal setting. Accordingly, there will be no appreciable benefit to having a preliminary hearing before an ALJ.

Alternative 2: Limit hearings to evidence submitted prior to the hearing.

Alternative 2 would require Respondents to submit all evidence with their Statement of Defense and within a set time period. The hearings would be limited to a finding of fact based on the documents and evidence submitted prior to the hearing. Respondents could introduce new information at the hearing only on a showing that they were unable to do so when the Statement of Defense form was submitted.

Alternative 2 would substantially streamline the hearing process. The findings of fact and written decision could be prepared prior to the administrative hearing, and the hearings would be significantly shorter. Ultimately, staff concluded that Alternative 2 would be more efficient, but provided less protection for the regulated community than the proposed regulations. The proposed regulations provide greater opportunity for Respondents to present evidence. Alternative 2 was rejected in favor of the more robust process under the proposed rulemaking.

Alternative 3: No Tolling or Waiving Penalties

Section 3015 of the proposed regulations provides several alternatives to reduce or eliminate penalties. The Trespass Statute requires a penalty to be imposed from the day the Commission issues an order until the violation is remedied. Alternative 3 would be a very rigid interpretation of this provision. The penalties would be imposed from the day the Commission votes to approve the decision and order until the violation is entirely removed or a valid Commission

authorization is signed by both parties. Penalties would not be waived, tolled, or reduced while the Commission processes an application or while Respondents remove the violation.

Alternative 3 could result in significant penalties being imposed while Respondents were incapable of complying with the Commission's order. It can take several months for Commission staff to process a lease application, send the documents to the applicant for their review and execution, and then finish processing and execution of the final documents. During this time, Respondents have acted to comply with the Commission's order and would still be fined up to \$1,000 a day under Alternative 3. Similarly, Respondents that choose to remove violations might need authorizations from multiple agencies or environmental review. Some agencies impose seasonal work restrictions in order to protect sensitive ecosystems. In all of these situations, even a diligent Respondent may be incapable of resolving a violation for many months.

Staff rejected Alternative 3. The primary objective of the Trespass Statute is to efficiently address unauthorized structures on State Lands. If a Respondent is delayed from resolving a violation by the Commission or other agencies, imposing a fine during this delay will not increase compliance. Rather, Alternative 3 would incentivize unpermitted removals of improvements. Alternative 3 would not provide any benefit over the proposed regulations because the proposed regulations allow for penalties to resume as if they had not been tolled if Respondents fail to diligently pursue a resolution. As proposed, the regulations provide a significant incentive to quickly resolve a violation. Finally, Alternative 3 would be more burdensome to the regulated community and raises questions of fairness because penalties would be imposed during periods when the Respondent couldn't legally comply with the Commission's order.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

The proposed regulations set forth the procedure for administrative hearings under the Trespass Statute. The proposed regulations do not duplicate or conflict with federal regulations.

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